

EX. 12

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JARI MCPHERSON, JERALD)
SAMS, AND DANIEL MARTINEZ,)
)
 Plaintiffs,)
) CIVIL ACTION
VS.)
) NO.: 1:20-cv-01223-DAE
TEXAS DEPARTMENT OF PUBLIC)
SAFETY,)
)
 Defendant.)

REMOTE ORAL DEPOSITION OF

MARK KOENIG

NOVEMBER 17, 2022

REMOTE ORAL DEPOSITION OF MARK KOENIG, produced
as a witness at the instance of the PLAINTIFFS, and
duly sworn, was taken in the above-styled and
numbered cause on November 17, 2022, from 9:33 a.m.
to 3:22 p.m., via Zoom, before Vanessa J. Theisen,
CSR in and for the State of Texas, reported by
machine shorthand, pursuant to the Federal Rules of
Civil Procedure and any provisions stated on the
record or attached hereto.

<p style="text-align: right;">38</p> <p>1 A. Yeah, I was aware that he -- that he was a 2 party to an investigation in Temple. 3 Q. You were aware that he complained? 4 MR. HARRIS: Object to the form of the 5 question. 6 A. I was aware that he was a -- that he was a 7 party to an investigation in Temple. 8 Q. (BY MR. NOTZON) What -- in what role was he 9 a party that you are aware of? 10 A. The part that I'm aware -- that I'm aware of 11 was that he was a respondent to a -- to a complaint 12 investigation. 13 Q. Did that relate to discrimination, 14 harassment, or retaliation? 15 A. Not that I'm aware of. 16 Q. Okay. We're talking about discrimination, 17 harassment, and retaliation in these complaints and 18 the buckets that we were putting them in. So -- 19 A. Okay. 20 Q. -- so you're saying that you have -- sitting 21 here today, you do not know that -- or you didn't 22 know, at the time that you were a captain in Austin, 23 that Special Agent McPherson, when he came to Austin, 24 that you were aware that he had made complaints of 25 discrimination in Temple?</p>	<p style="text-align: right;">40</p> <p>1 Q. Okay. And he didn't name Captain Schwartz? 2 A. I don't specifically remember if he said 3 Captain Schwartz. I don't think so, but I do 4 remember Lieutenant Holguin. 5 Q. Okay. And you heard that directly from 6 Special Agent McPherson when he came to meet with you 7 before he transferred? 8 A. Correct. 9 Q. That was that first meeting you had with 10 him? 11 A. Correct. 12 Q. And did you ever hear from anyone else that 13 Special Agent McPherson had made a complaint of 14 racial discrimination from his experience in Temple? 15 A. Yes. Captain Steven Schwartz. 16 Q. What did he tell you? 17 A. He just -- he was very general and 18 nonspecific in just saying that he was having to deal 19 with Agent McPherson and McPherson alleging racial 20 discrimination, but he didn't go into the absolute 21 specifics. 22 Q. Did he say who Special Agent McPherson was 23 complaining about? 24 A. I mean, other -- I mean, himself, Captain 25 Schwartz, and his lieutenant.</p>
<p style="text-align: right;">39</p> <p>1 A. I wasn't aware that he made complaints. We 2 did have a discussion when he first showed up, and he 3 did say something to the extent that he believed he 4 was treated unjustly by his previous supervisor in 5 Temple, that -- and it was racially motivated. 6 And at that point, I had asked him, I 7 said, "So do you want to talk about this more," or 8 something to the extent of this, I'm not -- this is 9 not verbatim. But something to the extent of "Do you 10 want to talk about this more and let me know more 11 about it?" 12 And he said at this time his attorney is 13 aware of the situation and has advised him not to 14 discuss it, but they will be doing something in the 15 future. 16 So he, in a sense, made notification 17 that he felt like he was being racially targeted by 18 his supervisor in Temple. 19 Q. And that was Captain Schwartz? 20 A. He was speaking about Lieutenant Oscar 21 Holguin is who -- 22 Q. Okay. 23 A. -- my understanding. 24 Q. Did he name Lieutenant Holguin? 25 A. Yes, he named his lieutenant in Temple.</p>	<p style="text-align: right;">41</p> <p>1 Q. So Schwartz confirmed for you that he was a 2 respondent as well as Lieutenant Holguin? 3 A. Yes. 4 Q. From McPherson's complaint of 5 discrimination? 6 A. Yes. 7 Q. And when was that conversation that you had 8 with Captain Schwartz? 9 A. It was, I guess, sometime -- I don't 10 remember specifically, but after Special Agent 11 McPherson had arrived to work at the capitol. So I 12 don't know specifically. Within months, I would say. 13 Q. Did you call Captain Schwartz or did Captain 14 Schwartz call you? 15 A. I don't remember the direction of the call. 16 Either that or we were at a captain's meeting. We 17 had monthly or quarterly captain's meetings. It 18 could have been at a captain's meeting. I don't -- I 19 can't specifically say if it was a phone call or if 20 it was in person, that conversation. I want to say 21 it was in person, that it was at a captain's meeting 22 and just discussing what was -- you know, his -- what 23 was going on in general. 24 Q. When McPherson told you in that first 25 meeting that he had with you before he came and it</p>

<p style="text-align: right;">42</p> <p>1 was just the two of you, that he had been</p> <p>2 experiencing race discrimination in the workplace,</p> <p>3 didn't you become an agent of notice at that time?</p> <p>4 A. He didn't specify anything. He said that it</p> <p>5 -- that he had it under control and under the</p> <p>6 advisement of his attorney that he wasn't to discuss</p> <p>7 it.</p> <p>8 MR. NOTZON: Object as nonresponsive.</p> <p>9 Q. (BY MR. NOTZON) Didn't you become an agent</p> <p>10 of notice, according to the policies and the way</p> <p>11 you're trained, when someone reports to you that they</p> <p>12 have experienced race discrimination in the workplace</p> <p>13 at DPS that you become an agent of notice regardless</p> <p>14 of what they say they want you to do or not do?</p> <p>15 MR. HARRIS: Object to the form of the</p> <p>16 question.</p> <p>17 A. So I say the answer to the question is I do</p> <p>18 -- I -- a person does become an agent of notice when</p> <p>19 they become aware.</p> <p>20 Q. (BY MR. NOTZON) You. You.</p> <p>21 A. Whenever the --</p> <p>22 MR. HARRIS: Object to the form of the</p> <p>23 question.</p> <p>24 Q. (BY MR. NOTZON) Right. You said "a person,"</p> <p>25 but I'm actually asking about you in that situation.</p>	<p style="text-align: right;">44</p> <p>1 Q. (BY MR. NOTZON) And "to them," meaning the</p> <p>2 major above you?</p> <p>3 A. To OIG and EEO. You're not required to go</p> <p>4 directly to OIG or EEO to file a complaint or make</p> <p>5 notice. You can go -- you can do it through your</p> <p>6 chain of command also. But you're allowed to go</p> <p>7 directly to them if you choose.</p> <p>8 Q. Okay. And your chain of command would have</p> <p>9 been Major Ortiz at that time?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Did you report that to Major Ortiz?</p> <p>12 A. I would -- I would say yes.</p> <p>13 Q. You don't remember?</p> <p>14 A. Not specifically. I mean, we had a very</p> <p>15 open relationship in conversations, and I can't tell</p> <p>16 you that I specifically remember that conversation.</p> <p>17 But, due to the nature of our relationship, I would</p> <p>18 say yes, he was made aware of that.</p> <p>19 Q. Okay. It wasn't required of you to report</p> <p>20 it to Major Ortiz. But, because of your</p> <p>21 relationship, you think you would have?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. There would be no requirement for you</p> <p>24 to talk to Captain Schwartz about it, correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">43</p> <p>1 MR. HARRIS: Object to the form of the</p> <p>2 question.</p> <p>3 A. Yes. I should have been an agent of notice.</p> <p>4 Q. (BY MR. NOTZON) And that agent of notice</p> <p>5 would have caused you to report that to EEO or OIG,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And/or -- and maybe this is the path you</p> <p>9 took -- to actually ask Schwartz about it as your</p> <p>10 co-capt -- as your -- I guess I'd say co-captain, not</p> <p>11 really, your compatriot in Temple?</p> <p>12 A. It would have been a topic of discussion,</p> <p>13 yes.</p> <p>14 Q. With Captain Schwartz?</p> <p>15 A. Correct.</p> <p>16 Q. As part of your training are you supposed to</p> <p>17 contact Captain Schwartz about that, or are you just</p> <p>18 supposed to contact EEO or OIG and let them do the</p> <p>19 investigating?</p> <p>20 MR. HARRIS: Object to the form of the</p> <p>21 question.</p> <p>22 A. The notification is to the EEO or the OIG or</p> <p>23 to your chain of command. There's not a requirement</p> <p>24 that you have to go directly to them, but you are</p> <p>25 allowed to go directly to them to file a complaint.</p>	<p style="text-align: right;">45</p> <p>1 Q. Would there be a prescription from you</p> <p>2 talking to Captain Schwartz about it?</p> <p>3 A. A what?</p> <p>4 Q. Would you be prohibited, according to the</p> <p>5 policy, from contacting Captain Schwartz about</p> <p>6 Special Agent McPherson's complaint of</p> <p>7 discrimination?</p> <p>8 A. No, I don't think so.</p> <p>9 MR. HARRIS: All right. We've been</p> <p>10 going for a bit over an hour. Would this probably be</p> <p>11 a good time to take a first morning break?</p> <p>12 MR. NOTZON: We can take a break.</p> <p>13 THE REPORTER: Okay. Off the record at</p> <p>14 10:39 a.m.</p> <p>15 (Recess from 10:39 a.m. to 10:52 a.m.)</p> <p>16 THE REPORTER: Back on the record at</p> <p>17 10:52.</p> <p>18 Q. (BY MR. NOTZON) Okay. Mr. Koenig, still</p> <p>19 talking about complaints of discrimination,</p> <p>20 harassment, or retaliation, and I had said that I</p> <p>21 wanted to ask -- also ask you about verbal</p> <p>22 complaints, not necessarily formal written</p> <p>23 complaints.</p> <p>24 Do you recall that Lieutenant Martinez</p> <p>25 had brought some complaints to you verbally before he</p>

<p>50</p> <p>1 A. Not yet.</p> <p>2 Q. And your role as an agent of notice is not</p> <p>3 to only report it to your supervisor, it is to report</p> <p>4 it to OIG or EEO, correct?</p> <p>5 MR. HARRIS: Object to the form of the</p> <p>6 question.</p> <p>7 A. I don't recall the specific requirements.</p> <p>8 Q. (BY MR. NOTZON) Okay. But what is clear in</p> <p>9 your memory is that you didn't report it to OIG or</p> <p>10 EEO, correct?</p> <p>11 A. I don't believe I did.</p> <p>12 Q. Anything else that you wanted to add to your</p> <p>13 prior testimony based upon the break that we had</p> <p>14 where you talked to your attorney?</p> <p>15 MR. HARRIS: Object to the form of the</p> <p>16 question and object to the characterization.</p> <p>17 A. No.</p> <p>18 Q. (BY MR. NOTZON) So I had been asking you</p> <p>19 about whether or not you recall Lieutenant Martinez</p> <p>20 making a verbal complaint of discrimination to you</p> <p>21 and you say you don't recall that happening?</p> <p>22 A. Specifically, no.</p> <p>23 Q. Do you recall -- and these are situations</p> <p>24 where you have not recalled these up to now.</p> <p>25 Do you recall that Dori Livingston had</p>	<p>52</p> <p>1 Then it went to a Hispanic male</p> <p>2 supervisor to another -- following that a Hispanic</p> <p>3 male supervisor. Then out to the field, which is a</p> <p>4 white male supervisor, then a black female</p> <p>5 supervisor, and then my final supervisor was a</p> <p>6 Hispanic male.</p> <p>7 So out of nine supervisors, three were</p> <p>8 white males. I said -- I told Ms. Livingston, I</p> <p>9 said, "No, I do not think that the CID promotional</p> <p>10 practice is racist, given my experience."</p> <p>11 Q. And what did she say as her reasons -- or</p> <p>12 did you ask her what her reasons for thinking it was?</p> <p>13 A. No.</p> <p>14 Q. So you didn't ask her why she thought it</p> <p>15 might be?</p> <p>16 A. No.</p> <p>17 Q. And she didn't volunteer that?</p> <p>18 A. Not that I remember.</p> <p>19 Q. Did she have any other complaint to you</p> <p>20 about race discrimination?</p> <p>21 A. No.</p> <p>22 Q. So she never said anything about the way</p> <p>23 that she was told she could or couldn't do her hair</p> <p>24 for her job?</p> <p>25 A. At one point there was -- I think she had</p>
<p>51</p> <p>1 made a complaint of race discrimination to you?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you didn't recall that earlier.</p> <p>4 Do you know why?</p> <p>5 A. Her race discrimination complaint was she</p> <p>6 asked me if I thought the DPS promotional system was</p> <p>7 racist.</p> <p>8 Q. Okay.</p> <p>9 A. Therefore, it wasn't a complaint. It was a</p> <p>10 question.</p> <p>11 Q. And why -- what did she -- what was the</p> <p>12 situation that she was asking about?</p> <p>13 A. She thought that the DPS promotional</p> <p>14 practice was racist, and she asked if I thought that</p> <p>15 the DPS CID promotional process was racist.</p> <p>16 Q. And what was your answer?</p> <p>17 A. My answer was, "Well, let me think about</p> <p>18 this, Dori."</p> <p>19 When I promoted into DPS or when I</p> <p>20 promoted into the CID narcotics service, my first</p> <p>21 supervisor was a Hispanic male. I then transferred</p> <p>22 to the Austin office, to which my second supervisor</p> <p>23 was a non-commissioned white female, shortly</p> <p>24 thereafter followed by a white male supervisor, then</p> <p>25 a white female supervisor, commissioned.</p>	<p>53</p> <p>1 wanted to do a specific type of hairstyle. I</p> <p>2 don't -- I don't recall specifics about that, but</p> <p>3 that was a dress code policy.</p> <p>4 Q. My question is did she make a complaint of</p> <p>5 race discrimination to you about her hair?</p> <p>6 A. Oh, no.</p> <p>7 Q. Did she make a complaint about the way that</p> <p>8 her squad was being treated by the other squads?</p> <p>9 A. No.</p> <p>10 Q. Did anyone make a complaint to you about the</p> <p>11 way their squads were being treated by the other</p> <p>12 squads?</p> <p>13 A. Just for clarification, you're asking did</p> <p>14 anyone complain about how they were being treated by</p> <p>15 their peers?</p> <p>16 Q. Yes.</p> <p>17 A. From different -- from different squads?</p> <p>18 Q. Yes.</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you recall that Patrick Alonzo had</p> <p>21 complained about the way 7C-1 was being treated by</p> <p>22 the other squads?</p> <p>23 A. Can you specify "being treated"? What do</p> <p>24 you mean by being treated?</p> <p>25 Q. Mocking, ostracizing, degrading comments,</p>

<p>58</p> <p>1 the alternate schedule.</p> <p>2 Q. Isn't it true that 7C2 never had nine days</p> <p>3 in a row that they were working while 7C1 had four</p> <p>4 days off during that period of time?</p> <p>5 A. I'm not aware of that.</p> <p>6 Q. Isn't it true that 7C1 in 2019 and 2020,</p> <p>7 from the time that Special Agent McPherson and</p> <p>8 Lieutenant Martinez got there in October of 2019,</p> <p>9 that the only black special agents were on 7C1 and</p> <p>10 none were in 7C2 and 7C-3?</p> <p>11 A. I would have to look at the schedule. I</p> <p>12 don't -- I don't know. I don't specifically recall</p> <p>13 that.</p> <p>14 Q. You don't recall that being a part of the</p> <p>15 complaint that was made?</p> <p>16 A. I recall that the assumption was that 7C1</p> <p>17 was comprised of all minorities, yes.</p> <p>18 Q. Okay. And that there weren't any blacks on</p> <p>19 the other squads?</p> <p>20 A. I don't recall if there was or not.</p> <p>21 Q. Okay. Do you recall that that was part of</p> <p>22 the complaint?</p> <p>23 A. I do recall that their assumption was</p> <p>24 there's a disproportionate weightiness of minorities</p> <p>25 on that one squad.</p>	<p>60</p> <p>1 would not say that it was all but one. It could have</p> <p>2 changed because -- as people moved on and off, yes,</p> <p>3 it could have changed.</p> <p>4 Q. Well, you were only there two and a half</p> <p>5 years, right?</p> <p>6 A. Yes.</p> <p>7 Q. And I'm referring to October of 2019 through</p> <p>8 the time of your retirement. So a year and a half</p> <p>9 or -- right?</p> <p>10 A. Okay.</p> <p>11 Q. Yeah, a year and a half. So does that help</p> <p>12 you?</p> <p>13 A. I still don't know the breakdown. I mean, I</p> <p>14 don't remember specifically. We -- during my tenure</p> <p>15 there, we went from 10 agents to 15 agents. We added</p> <p>16 a squad. 7C1 squad when I first got there was not</p> <p>17 the same makeup as the 7C1 squad was during mid-time</p> <p>18 I was there or even at the end.</p> <p>19 Q. Did you use race as a basis for populating</p> <p>20 7C1?</p> <p>21 A. Absolutely not.</p> <p>22 Q. So it's just happenstance that it happened</p> <p>23 to be that all the blacks in your unit were only on</p> <p>24 7C1?</p> <p>25 A. All of our most profound investigators that</p>
<p>59</p> <p>1 Q. So the answer is no, you don't recall that</p> <p>2 the -- part of the complaint was that there were no</p> <p>3 blacks on the other two squads?</p> <p>4 A. I don't remember if there wasn't no blacks</p> <p>5 on the other two squads or not without looking at the</p> <p>6 schedule.</p> <p>7 Q. I'm asking if you recall that was the</p> <p>8 complaint?</p> <p>9 A. If I recall right, it was they -- it was</p> <p>10 stating that the 7C1 was an all-minority squad.</p> <p>11 Q. So the answer is no, you don't recall that</p> <p>12 -- the fact that there were no blacks on the other</p> <p>13 two squads was also a part of the complaint?</p> <p>14 A. Specifically that there were no blacks on</p> <p>15 the other two squads, no, I don't recall that</p> <p>16 specifically.</p> <p>17 Q. And is it true that every person on 7C1, or</p> <p>18 most of them anyway, had C-1s in their record?</p> <p>19 MR. HARRIS: Object to the form of the</p> <p>20 question.</p> <p>21 A. A number of the folks on 7C1 did have C-1s.</p> <p>22 Q. (BY MR. NOTZON) Everybody but one maybe?</p> <p>23 A. If you give me a specific timeframe, I mean,</p> <p>24 I would have to regurgitate my memory. I don't have</p> <p>25 anything to sit down -- the whole time I was there I</p>	<p>61</p> <p>1 we believed were the top notch investigators and were</p> <p>2 better suited for that position were placed on 7C-1;</p> <p>3 however, to include that is also our starting point</p> <p>4 for our new agents for training purposes.</p> <p>5 Q. Okay. And was that your decision or whose</p> <p>6 decision?</p> <p>7 A. It was a combined agreed decision between</p> <p>8 myself and Major Ortiz.</p> <p>9 Q. Okay. And was that during the entire time</p> <p>10 that you were the captain over 7C1, that you would</p> <p>11 have the new agents start at 7C1?</p> <p>12 A. Correct.</p> <p>13 Q. Were there any exceptions to that?</p> <p>14 A. There were exceptions to that when we had</p> <p>15 more openings than opportunity.</p> <p>16 Q. What do you mean by that?</p> <p>17 A. We had -- when we had more openings</p> <p>18 available than, like, to sit there and put a whole</p> <p>19 bunch of new agents on a lieutenant is a -- is a --</p> <p>20 what do you call it?</p> <p>21 Q. Burden?</p> <p>22 A. It's a burden. It's disproportionate. You</p> <p>23 can't sit there and expect a lieutenant just to have</p> <p>24 a whole list -- a whole litany of new agents on it.</p> <p>25 So we needed to break it up and share the training</p>

<p>62</p> <p>1 responsibilities amongst the lieutenants.</p> <p>2 So the goal was that brand new agents</p> <p>3 off the promotional list from troopers would go into</p> <p>4 the CID squad. That was the goal; however, there was</p> <p>5 one point where -- that wasn't something that we</p> <p>6 could -- we could do that would be fair to the whole.</p> <p>7 Q. Did Lieutenant Martinez, who is the</p> <p>8 lieutenant that you were trying to protect from a</p> <p>9 burden on 7C1, did he ever complain about having too</p> <p>10 many new special agents?</p> <p>11 A. No, Lieutenant Martinez had a fantastic</p> <p>12 attitude. He was -- he was --</p> <p>13 Q. So the answer is no? The answer was no?</p> <p>14 A. No.</p> <p>15 Q. He never complained about that?</p> <p>16 A. Complained, no.</p> <p>17 Q. Comment?</p> <p>18 A. Comment, yes.</p> <p>19 Q. Concern?</p> <p>20 A. Maybe a concern but not a complaint.</p> <p>21 Q. Did he ask for assistance? Did he say, "I</p> <p>22 don't want any more new agents"?</p> <p>23 A. I don't specifically remember him saying, "I</p> <p>24 don't want anymore new agents."</p> <p>25 Q. Because when you -- when you have this rule</p>	<p>64</p> <p>1 A. No.</p> <p>2 Q. Okay. And then when an opening came open,</p> <p>3 he could have taken that opening and had the new</p> <p>4 person go to 7C1, correct?</p> <p>5 A. At that point in time, the decision for</p> <p>6 interoffice transfers wasn't taking place --</p> <p>7 interdistrict transfers wasn't taking place.</p> <p>8 Q. Whose rule was that?</p> <p>9 A. That was my rule. Major Ortiz's rule.</p> <p>10 Q. Why was that rule in place?</p> <p>11 A. Because we --</p> <p>12 Q. Is it because Mr. McPherson wanted to</p> <p>13 transfer and you weren't going to let him do it?</p> <p>14 A. No, no. That's not the case at all.</p> <p>15 Q. Because he had complaints of race</p> <p>16 discrimination and retaliation on the books?</p> <p>17 A. No, no.</p> <p>18 Q. And DPS was giving him a hard time?</p> <p>19 A. No.</p> <p>20 Q. So what's the reason?</p> <p>21 A. The reason to -- the reason for what? Ask</p> <p>22 -- ask me that question one more time.</p> <p>23 Q. You said you had a rule all of a sudden that</p> <p>24 there were no interagency transfers or</p> <p>25 interdistrict --</p>
<p>63</p> <p>1 that all the new special agents go to 7C1</p> <p>2 investigations and then you change that and don't</p> <p>3 allow agents to go to 7C2 that wanted to go to 7C2 to</p> <p>4 begin with, you see the perception of a problem</p> <p>5 there, that maybe you're not actually having a rule</p> <p>6 and being fair about it, that maybe you're using</p> <p>7 other criteria --</p> <p>8 A. No.</p> <p>9 Q. -- besides giving Lieutenant Martinez a</p> <p>10 break?</p> <p>11 A. No.</p> <p>12 Q. You don't see that?</p> <p>13 A. No.</p> <p>14 Q. When Special Agent McPherson specifically</p> <p>15 asked to go to 7C2 to begin with, since he wasn't a</p> <p>16 new agent, yet you still put him on 7C1 and didn't</p> <p>17 put him on 7C2, correct?</p> <p>18 A. He went to 7C1, correct.</p> <p>19 Q. Right. But you put him on 7C1 you're saying</p> <p>20 because he was a new agent, but he wasn't a new</p> <p>21 agent?</p> <p>22 A. No. No. That's where the opening was.</p> <p>23 Q. There were no openings on 7C2 --</p> <p>24 A. Not that I recall.</p> <p>25 Q. -- when he came in?</p>	<p>65</p> <p>1 A. Oh.</p> <p>2 Q. -- or you didn't have a word for it. You</p> <p>3 just kept coming up with new words.</p> <p>4 A. We didn't want agents lieutenant shopping,</p> <p>5 basically, just jumping from lieutenant to</p> <p>6 lieutenant. Maybe at that point in time they're</p> <p>7 having maybe -- for whatever reason, they want to</p> <p>8 transfer, other than the -- I mean, that's it. We</p> <p>9 just -- we just didn't allow them just to keep</p> <p>10 bouncing around.</p> <p>11 Q. What bouncing around was going on that you</p> <p>12 were stopping?</p> <p>13 A. That's just it. We were -- we -- the</p> <p>14 culture that I came from, NCID was that in offices</p> <p>15 where you had multiple squads, that the bouncing</p> <p>16 around, going from one lieutenant to the other</p> <p>17 lieutenant, was not something that we practiced.</p> <p>18 MR. NOTZON: Object as nonresponsive.</p> <p>19 Q. (BY MR. NOTZON) I'm specifically asking in</p> <p>20 the fall and winter of 2019, what jumping around were</p> <p>21 you stopping?</p> <p>22 A. Like I said --</p> <p>23 Q. Who was jumping around?</p> <p>24 MR. HARRIS: All right. Can you let him</p> <p>25 answer the question?</p>

<p>66</p> <p>1 A. During that time, the general rule was is 2 that no one was going from -- jumping -- going from 3 one lieutenant to another lieutenant within the same 4 district. That's it. That's all there is to it. 5 Q. (BY MR. NOTZON) And was that in writing? 6 Was there a directive that was put out? 7 A. No. 8 Q. So nobody in the three squads knows that, 9 this rule, other than you and Major Ortiz? 10 A. No, that's not true. I had meetings with 11 the agents. That they -- 12 Q. Okay. So the agents did -- were told? 13 A. They were aware of it, yes. 14 Q. And the lieutenants were told? 15 A. Yes. 16 Q. That there's this rule there's not going to 17 be any switching? 18 A. Not just flipantly switching, no. 19 Q. Flipantly switching. Okay. What made you 20 think that McPherson wanted to switch to C-2 when 21 there was an opening two months after he got there 22 was a flipant switch? 23 A. Part of the deal was that Agent McPherson 24 was on a performance improvement plan. And to sit 25 there and start this stuff over again with a</p>	<p>68</p> <p>1 they -- whenever he transferred to us to carry out 2 the, I guess, lack of a better term, the punishment 3 process. 4 Q. If there's no PIP in his record, are you 5 possibly confusing him with someone else? 6 A. I could be. 7 Q. Therefore, if he didn't have a PIP on his 8 record, what would be the reason why he couldn't have 9 taken that position when it came open? 10 A. So -- say that again. 11 Q. You're aware that McPherson was qualified to 12 do surveillance -- counter-surveillance work, 13 correct? 14 A. Yes. 15 Q. He wasn't -- he had experience in it and he 16 wasn't a new agent, correct? 17 A. He wasn't a new agent, yes. 18 Q. And he had experience in 19 counter-surveillance? 20 A. Personally at that point I don't know. 21 Q. You don't remember, or you don't -- or you 22 didn't -- or you didn't know? 23 A. He wasn't -- I never worked with him. I 24 didn't know what his -- what his previous experiences 25 were. Q. Yeah, but when he came to see you, you asked</p>
<p>67</p> <p>1 different lieutenant on a different squad, it just 2 wasn't conducive to a productive environment. 3 Q. Who put him on a performance improvement 4 plan? 5 A. It was -- it was brought over from where he 6 transferred from, from Temple. 7 Q. So he could have started at 7C2 instead of 8 7C1 because he wasn't a new agent? 9 A. No. 10 Q. All right. You said new agents start at 11 7C1. So he could have started at 7C2? 12 A. The opening was in 7C1. The 7C2 was full. 13 In order to put him on 7C2, I would have had to 14 displace someone at that time. 15 Q. And why do you think he was on a PIP? 16 MR. HARRIS: Object to the form of the 17 question. 18 A. It carried over from his previous duty 19 station. 20 Q. (BY MR. NOTZON) And is -- you've seen 21 documentation of that? 22 A. The -- yes. I mean, we -- we got from -- 23 the decision memo from the chief's office and that 24 laid out the results of what he had going on in 25 Temple and what we had to do when he trans -- when</p>	<p>69</p> <p>1 him what he wanted to do, and he told you he wanted 2 7C2, correct? 3 A. He did state that he wanted to be on the 4 counter-surveillance squad. 5 Q. And then he told you why and he told you he 6 had undercover experience, didn't he? 7 A. I don't recall that. 8 Q. You could have asked him what his experience 9 was? 10 A. Maybe I did. 11 Q. Right. You just don't recall? 12 A. Correct. 13 Q. But he's there for two months, and then you 14 end up putting a new agent onto that unit instead of 15 him and that new agent was Mr. Head, correct? 16 A. Correct. 17 Q. And then you did it again, you put another 18 new agent on that unit, too, that had no experience 19 instead of putting them onto 7C1, correct? You 20 didn't just do it once; you did it at least two 21 times, correct? 22 A. Let me think about this. 23 Q. Remember the guy Randy? 24 A. I think so. Yeah, I think he was short 25 term.</p>

<p style="text-align: right;">70</p> <p>1 Q. Start with --</p> <p>2 A. That's whenever we -- that was at the time</p> <p>3 whenever we -- yeah, whenever we were allowed to</p> <p>4 expand and -- yeah, at that point in time we had to</p> <p>5 spread out our new agents for training purposes.</p> <p>6 Q. Says who?</p> <p>7 A. Says myself and Major Ortiz.</p> <p>8 Q. Okay. Just between the two of you? This</p> <p>9 wasn't a DPS-wide directive?</p> <p>10 A. No, it's a process. They were -- they</p> <p>11 needed to be trained in CID as new agents. And once</p> <p>12 again, to not put all the burden on one lieutenant,</p> <p>13 it was spread out.</p> <p>14 Q. When -- do you recall your -- the first time</p> <p>15 you became aware of Lieutenant Martinez?</p> <p>16 A. Vaguely, yeah.</p> <p>17 Q. Was it before or after he put in for a</p> <p>18 transfer to Austin?</p> <p>19 A. I don't remember.</p> <p>20 Q. In other words, was his -- when he put in</p> <p>21 for a transfer to Austin was that the first time you</p> <p>22 became aware of him?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Same question for Mr. McPherson, did</p> <p>25 you first become aware of Mr. McPherson when he put</p>	<p style="text-align: right;">72</p> <p>1 So, I mean, I can't remember exactly every time I met</p> <p>2 somebody.</p> <p>3 Q. Who first asked to come to -- well, let me</p> <p>4 just confirm. Martinez and McPherson both came to</p> <p>5 Austin in October of '19. Is that consistent with</p> <p>6 your memory? They came a couple of weeks from each</p> <p>7 other?</p> <p>8 A. Yes.</p> <p>9 Q. So my question is which one put in first to</p> <p>10 come, if you can recall?</p> <p>11 A. Not McPherson. Lieutenant Martinez.</p> <p>12 Q. Okay. And why do you think that's the case?</p> <p>13 A. Well, in his own words, he wanted to start</p> <p>14 new from El Paso. He thought it was a great</p> <p>15 opportunity to come down and to work down at the</p> <p>16 capitol, to work a diverse case load, to just</p> <p>17 basically improve his promotional capital.</p> <p>18 Q. And -- but why do you think it was him that</p> <p>19 put in first before McPherson?</p> <p>20 A. The openings, I don't know. No, I don't</p> <p>21 know.</p> <p>22 Q. Are you -- do you remember it that way or</p> <p>23 you're -- you're sure about it or you just -- you're</p> <p>24 not sure?</p> <p>25 A. No, I'm not sure. I don't know.</p>
<p style="text-align: right;">71</p> <p>1 in for a transfer to Austin?</p> <p>2 A. His interest in coming to the capitol or,</p> <p>3 like, just -- like hearing about him, or what do you</p> <p>4 mean?</p> <p>5 Q. Yeah, the -- so you don't know all the</p> <p>6 special agents that are out there, right? You come</p> <p>7 upon them when they come across you for one reason or</p> <p>8 another, and I'm asking did you have any knowledge of</p> <p>9 McPherson prior to him putting in or expressing an</p> <p>10 interest to come to Austin?</p> <p>11 A. I would say superficial, just in passing</p> <p>12 knowledge of him.</p> <p>13 Q. What -- and what was that?</p> <p>14 A. That he was inside the regulatory service</p> <p>15 division and that's it. I really didn't know the</p> <p>16 guy. I didn't.</p> <p>17 Q. Okay. I mean, why did he get brought to</p> <p>18 your attention when he was in RSD?</p> <p>19 A. No, just in passing, like, you go -- you see</p> <p>20 people in the office, "Hey, how you going? I'm so</p> <p>21 and so," they meet, you know. I -- I don't remember,</p> <p>22 just in passing, in general, I mean.</p> <p>23 Q. Okay.</p> <p>24 A. I was also in -- I did a lot of training. I</p> <p>25 put on a lot of training, and I met a lot of people.</p>	<p style="text-align: right;">73</p> <p>1 Q. Okay. Do you recall that there was a Mark</p> <p>2 Berry that you were interested in having promote to</p> <p>3 lieutenant for that position?</p> <p>4 A. Yes.</p> <p>5 Q. And he was on a promotional board, that if</p> <p>6 that position was open he could have -- you could</p> <p>7 have filled it with Mr. Berry?</p> <p>8 A. Correct. Well, I vaguely remember that.</p> <p>9 Q. But Lieutenant Martinez put in for the</p> <p>10 transfer --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- and he could -- he could take the</p> <p>13 position and not allow Mr. Berry to take it because</p> <p>14 he would put in as a transfer?</p> <p>15 A. I don't remember that specifically but --</p> <p>16 no, I don't remember it specifically.</p> <p>17 Q. Okay. But it's true that the way the</p> <p>18 transfers work that coming from El Paso to Austin, if</p> <p>19 there's an opening and he qualifies for it, he gets</p> <p>20 it?</p> <p>21 A. Yes.</p> <p>22 Q. Was there ever any effort to block</p> <p>23 Martinez's transfer?</p> <p>24 A. Yes, there was.</p> <p>25 Q. And who engaged in that effort?</p>

<p style="text-align: right;">78</p> <p>1 A. No.</p> <p>2 Q. So McPherson had just as much right to</p> <p>3 transfer to Austin like Martinez did, regardless of</p> <p>4 having a C-1?</p> <p>5 A. Correct.</p> <p>6 Q. If there was -- if there was an opening?</p> <p>7 A. If -- yes.</p> <p>8 Q. If there -- yeah. Okay. And it's your</p> <p>9 testimony that the only opening at Capitol CID under</p> <p>10 you was on 7C1?</p> <p>11 A. That's what I recall.</p> <p>12 Q. Okay. So do you also recall asking</p> <p>13 Mr. McPherson when he came to meet with you, telling</p> <p>14 him about your three squads and which one he wanted</p> <p>15 -- he wanted to be on? Do you remember asking him</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. And why would you ask him that if he had to</p> <p>19 start at 7C1?</p> <p>20 A. Professional goals.</p> <p>21 Q. Okay. And why would you ask him that if you</p> <p>22 weren't going to allow any of the special agents to</p> <p>23 transfer between squads?</p> <p>24 A. Once again, professional goals.</p> <p>25 Q. So it had no relevance to whether or not he</p>	<p style="text-align: right;">80</p> <p>1 lieutenants.</p> <p>2 Q. So getting the job done is not as important</p> <p>3 as making it fair for the lieutenants and the special</p> <p>4 agents to have access to experiences that they're not</p> <p>5 as qualified for as McPherson?</p> <p>6 A. I disagree with that. That is --</p> <p>7 MR. HARRIS: Object to form. Sorry.</p> <p>8 Just let me --</p> <p>9 A. -- that is the --</p> <p>10 MR. HARRIS: -- get my objection in</p> <p>11 first. Object to the form of the question.</p> <p>12 A. I disagree with you. I think that is</p> <p>13 getting the job done.</p> <p>14 Q. (BY MR. NOTZON) Even though you admit</p> <p>15 McPherson had actual experience, years of experience</p> <p>16 with counter-surveillance work and Head didn't?</p> <p>17 A. Incorrect. I didn't --</p> <p>18 MR. HARRIS: Object to the form of the</p> <p>19 question.</p> <p>20 A. I did not know his experience level in</p> <p>21 counter-surveillance.</p> <p>22 Q. (BY MR. NOTZON) You're the captain over</p> <p>23 this unit, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And you had access to the personnel files of</p>
<p style="text-align: right;">79</p> <p>1 would ever get to 7C2 or get what he wanted. You</p> <p>2 just wanted to know it?</p> <p>3 A. No, it -- I wanted to know what his</p> <p>4 professional goals were.</p> <p>5 Q. Okay. But not so that you could help him</p> <p>6 achieve them?</p> <p>7 A. No, that's not correct.</p> <p>8 Q. Well, you didn't, did you?</p> <p>9 A. Did I -- I didn't do what?</p> <p>10 Q. You didn't help him to achieve it when an</p> <p>11 opening came open on 7C2 two months after he got</p> <p>12 there?</p> <p>13 A. I did help him achieve it.</p> <p>14 Q. You didn't help him achieve it two months</p> <p>15 later when an opening came open and he could have</p> <p>16 taken that spot on 7C2 and have the new,</p> <p>17 unexperienced, no criminal investigation, no</p> <p>18 undercover work experience Head take over the 7C1</p> <p>19 training spot, correct?</p> <p>20 A. No, that's not correct.</p> <p>21 Q. Why not?</p> <p>22 A. Because we had a number of agents that were</p> <p>23 transferring that were promoting, and we needed to,</p> <p>24 as best we could, even out the training opportunities</p> <p>25 for them to make it fair for them and for the</p>	<p style="text-align: right;">81</p> <p>1 all your agents, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you had a conversation with McPherson</p> <p>4 before he even showed up about what he wanted and why</p> <p>5 he wanted it?</p> <p>6 A. Yes.</p> <p>7 Q. And so when you say, "I didn't know what his</p> <p>8 experience was," that doesn't really ring true, does</p> <p>9 it?</p> <p>10 A. You said his surveillance experience. I did</p> <p>11 not know his surveillance experience.</p> <p>12 Q. It was knowable, wasn't it?</p> <p>13 A. It was potential, but I did not know.</p> <p>14 Q. No, but you had access to his file. You had</p> <p>15 access to him. You could have asked him if he didn't</p> <p>16 already tell you.</p> <p>17 A. Like I said, I did not have firsthand</p> <p>18 knowledge.</p> <p>19 Q. That's your testimony?</p> <p>20 A. I did not have firsthand knowledge of his</p> <p>21 surveillance experience prior to coming to --</p> <p>22 Q. Okay.</p> <p>23 A. -- the capitol.</p> <p>24 Q. And you're saying he didn't tell you what</p> <p>25 his experience was either, correct?</p>

<p style="text-align: right;">82</p> <p>1 A. Not spec -- I don't remember specifically, 2 no. 3 Q. Okay. When he told you he wanted 7C2, you 4 don't remember him telling you why he thought that 5 would be good for him? 6 A. No, I don't -- I vaguely remember him, you 7 know, saying that he really enjoys it. 8 Q. All right. And -- 9 MR. HARRIS: All right. We've been 10 going now for -- 11 Q. (BY MR. NOTZON) -- that would have been a 12 nice -- that would have been a nice time to ask him, 13 do you have any experience in it, but you don't 14 recall if you did that or not? 15 A. Correct. 16 Q. And when you were assigning McPherson to a 17 position on your three squads, you didn't try to make 18 it fair for him and put him in the best light of his 19 career like you did with Head and the others, like 20 you testified just a little while ago? 21 A. That's incorrect. 22 Q. Okay. What did you do for Mr. McPherson to 23 make it as fair for him as possible and promote his 24 career? 25 A. I put him on Lieutenant Danny Martinez's</p>	<p style="text-align: right;">84</p> <p>1 Mr. McPherson's complaint of discrimination, or did 2 Hanson tell you about his knowledge about -- 3 A. I'm going to say -- 4 Q. -- Mr. McPherson's complaint of 5 discrimination? 6 A. No. I don't think he told me about -- I 7 don't recall him telling me about complaints of 8 discrimination from Agent McPherson. 9 Q. Did you ever have a conversation with 10 Lieutenant Hanson about McPherson's complaints of 11 discrimination in that district? 12 A. Discrimination, I don't believe so. 13 Q. Did you ever have any conversations with 14 anyone other than Captain Schwartz and Special Agent 15 McPherson about his -- about McPherson's complaints 16 of discrimination up in Temple? 17 A. Not that I recall. 18 MR. HARRIS: All right. Like I said, 19 we've been going on for about another hour. So is 20 this a good time to take a break? 21 MR. NOTZON: Yeah, let's go ahead and go 22 off the record. 23 THE REPORTER: Off the record at 24 11:59 [sic]. 25 (Recess 11:49 a.m. to 12:23 p.m.)</p>
<p style="text-align: right;">83</p> <p>1 squad, who at that time -- 2 Q. Yeah. 3 A. -- had a 100 percent -- to my knowledge at 4 that time, did not know Agent McPherson from anyone 5 else. 6 Lieutenant Hanson, on the other squad, 7 the counter-surveillance squad, had previously been 8 working in Temple where Agent McPherson was coming 9 from. Okay. So to avoid any type of issue that I 10 could potentially foresee, I wanted to give Agent 11 McPherson the best opportunity available to sit there 12 -- he wanted -- he wanted to basically start new, 13 then, and start fresh. My opinion was the best way 14 to do that was to put him under the tutelage and 15 oversight of Lieutenant Martinez. 16 Q. Didn't Hanson work in Waco and not Temple? 17 A. You're correct. So it is -- 18 Q. They didn't work together, correct? 19 A. They were in the same district. 20 Q. They didn't work together, correct? 21 A. They were in the same district. 22 Q. They weren't in the same office? 23 A. They weren't in the same office. 24 Q. And did you have conversations with Hanson, 25 I guess it was Lieutenant Hanson at the time, about</p>	<p style="text-align: right;">85</p> <p>1 THE REPORTER: Back on the record at 2 12:23. 3 Q. (BY MR. NOTZON) All right. So I had talked 4 to you about efforts to block Lieutenant Martinez 5 from coming down. Were there any efforts to block 6 McPherson from coming down to Austin? 7 A. Yes. 8 Q. And who participated in those efforts? 9 A. I want to say it was -- well, it was 10 definitely myself -- I say myself, I was 11 communicating with Major Ortiz and then also Director 12 Dwight Mathis. 13 Q. Okay. And what was the -- who was the one 14 that came up with the idea first? 15 A. I don't -- I don't recall. 16 Q. Was there anybody else besides the three of 17 you? 18 A. No. 19 Q. Okay. Did anybody disagree with the three 20 of you? In other words, did somebody say, "We 21 shouldn't be trying to block him," or something to 22 that effect? 23 A. Not that I'm aware of. 24 Q. Okay. And what was the reason for the three 25 of you wanting to block McPherson's transfer to</p>

<p style="text-align: right;">86</p> <p>1 Austin?</p> <p>2 A. Just for the mere reason of how -- what we</p> <p>3 were trying to do was build the elite culture of the</p> <p>4 capitol, and, you know, re-image it, I guess for lack</p> <p>5 of better terms. And bringing, you know, people in</p> <p>6 with sustained C-1s, under investigations, issues</p> <p>7 like that, tarnishes it. Primarily amongst with the</p> <p>8 agents there at the time.</p> <p>9 Q. Were there any agents that were already</p> <p>10 there with C-1s?</p> <p>11 A. So I'm sure there were.</p> <p>12 Q. Okay. And how did they apply to get in, or</p> <p>13 were they already there?</p> <p>14 A. They were already there.</p> <p>15 Q. Do you remember who that was?</p> <p>16 A. No.</p> <p>17 Q. Did more people come to CID under your</p> <p>18 supervision in Austin after McPherson and Martinez</p> <p>19 came that had C-1s?</p> <p>20 A. Yes.</p> <p>21 Q. And did you try to block them?</p> <p>22 A. Yes.</p> <p>23 Q. And who were they?</p> <p>24 A. Lieutenant Ramiro Saldivar. Special Agent</p> <p>25 Chase Oduwole. I'm trying to -- I think that was it.</p>	<p style="text-align: right;">88</p> <p>1 Lieutenant Martinez?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Is it possible that you did because you knew</p> <p>4 about it?</p> <p>5 A. Not that I recall.</p> <p>6 Q. So it's not possible?</p> <p>7 A. I don't recall saying that.</p> <p>8 Q. I'm asking you is it possible that you did,</p> <p>9 because you've already testified that you knew about</p> <p>10 his complaint of race discrimination up in Temple.</p> <p>11 I'm asking if you're saying that you would not have</p> <p>12 said anything about race to Martinez, or you don't</p> <p>13 recall?</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. So just to be clear, you're not</p> <p>16 ruling out the possibility that you mentioned race to</p> <p>17 Martinez when you were talking about McPherson and</p> <p>18 what you knew about him up in Temple?</p> <p>19 A. I don't recall.</p> <p>20 Q. That's not an answer to my question. Are</p> <p>21 you saying it's -- you're not able to say it's not</p> <p>22 possible? Is that what you're saying?</p> <p>23 A. What I'm saying is I don't -- I don't recall</p> <p>24 saying that.</p> <p>25 Q. Okay. Do you recall using the word</p>
<p style="text-align: right;">87</p> <p>1 Q. Did you ever have a conversation with</p> <p>2 Lieutenant Martinez where you talked to him about</p> <p>3 what you knew about McPherson up in Temple?</p> <p>4 A. Yes.</p> <p>5 Q. And when did that conversation take place?</p> <p>6 A. At the preliminary process. Whenever --</p> <p>7 placement of the -- Agent McPherson on Lieutenant</p> <p>8 Martinez's squad.</p> <p>9 Q. Are you aware that McPherson came two weeks</p> <p>10 before Martinez?</p> <p>11 A. So he was -- yes, he did physically show up</p> <p>12 there, yeah, before Lieutenant Martinez.</p> <p>13 Q. So did you have that conversation with</p> <p>14 Martinez before Martinez showed up or after Martinez</p> <p>15 showed up?</p> <p>16 A. After Martinez showed up.</p> <p>17 Q. And who else was in that meeting besides you</p> <p>18 and Lieutenant Martinez?</p> <p>19 A. Lieutenant Hanson, I believe.</p> <p>20 Q. Okay. Anyone else?</p> <p>21 A. Not that I specifically remember.</p> <p>22 Q. Okay. Did you mention that McPherson had</p> <p>23 made a complaint of race discrimination -- not</p> <p>24 necessarily using those words, but did you use the</p> <p>25 word "race" in part of your communication with</p>	<p style="text-align: right;">89</p> <p>1 "lawsuit" -- that McPherson had a lawsuit that he was</p> <p>2 filing against Schwartz -- to Martinez in your</p> <p>3 conversation with Lieutenant Martinez?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Other than Hanson, Schwartz, and McPherson,</p> <p>6 did you have any other conversations about</p> <p>7 McPherson's time in Temple regarding McPherson?</p> <p>8 A. With Major Ortiz, yes.</p> <p>9 Q. Okay. And Major Ortiz, did he know things</p> <p>10 about Temple that you didn't know, or were you</p> <p>11 reporting to Major Ortiz what you were learning?</p> <p>12 A. I don't recall him providing information.</p> <p>13 Q. Okay. Anyone else that you spoke to about</p> <p>14 Special Agent McPherson and his time in Temple, other</p> <p>15 than the people we just talked about?</p> <p>16 A. Regional Director Mathis.</p> <p>17 Q. Okay. Same thing with him, you were just</p> <p>18 reporting to him what you had heard?</p> <p>19 A. Yes.</p> <p>20 Q. Was that part of the conversation about</p> <p>21 blocking McPherson, or was it some other conversation</p> <p>22 you were having?</p> <p>23 A. It was conversations about blocking him.</p> <p>24 Q. Okay. Anyone else that you talked to about</p> <p>25 McPherson?</p>

<p>90</p> <p>1 A. Not that I recall.</p> <p>2 Q. Okay.</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you ever have any conversations with</p> <p>5 anyone about McPherson where they were saying</p> <p>6 positive things about McPherson and not just about</p> <p>7 the C-1 and his complaint of discrimination up in</p> <p>8 Temple?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Did anyone in Austin ever communicate to you</p> <p>11 that they felt it was unfair of -- or to McPherson to</p> <p>12 not give him a chance to prove himself here without</p> <p>13 the negative comments about Temple?</p> <p>14 A. I believe Chief Ruocco had mentioned about</p> <p>15 that situation that you're describing.</p> <p>16 Q. And was that his communication to you or --</p> <p>17 while -- I'm sorry. I'll withdraw that question.</p> <p>18 Who was in that communication that you</p> <p>19 received, that from Chief Ruocco?</p> <p>20 A. Major Ortiz.</p> <p>21 Q. Just the three of you?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And do you remember when that was?</p> <p>24 A. During the time that the -- he had put in</p> <p>25 for the transfer. So during -- it was a short amount</p>	<p>92</p> <p>1 very well under your supervision?</p> <p>2 A. It would be.</p> <p>3 Q. And that he performed, in fact, well above</p> <p>4 average compared to the other special agents?</p> <p>5 A. Well above average? I wouldn't say well</p> <p>6 above average. I think that he did a good job.</p> <p>7 Q. He was award-winning, wasn't he?</p> <p>8 A. He did a good job when he was working down</p> <p>9 there. He was recognized for some achievements that</p> <p>10 he -- or an achievement that he conducted and -- yep.</p> <p>11 Q. What was he recognized for?</p> <p>12 A. I hate to say I don't recall, but I don't</p> <p>13 recall the specific one. But I've -- yeah.</p> <p>14 Q. Would it be true that he didn't receive any</p> <p>15 awards while you were the captain? And it -- only</p> <p>16 after you retired that he received the award?</p> <p>17 A. I know he received acknowledgment.</p> <p>18 Necessarily an award, what -- I guess that's a</p> <p>19 definition that you need to let me know what you</p> <p>20 mean.</p> <p>21 Q. Well, you guys -- it's your workplace.</p> <p>22 Don't you give out awards?</p> <p>23 A. There are a litany of -- of awards, yes.</p> <p>24 Q. The Regional Director Award is the big one?</p> <p>25 A. There -- the big one is the Director Award.</p>
<p>91</p> <p>1 of time but during the time he had put in for a</p> <p>2 transfer.</p> <p>3 Q. Okay. So Chief Ruocco is saying it in a</p> <p>4 prospective light, like you should give McPherson a</p> <p>5 chance when he gets here?</p> <p>6 A. Yes, yes.</p> <p>7 Q. Okay. Anyone else express a similar</p> <p>8 sentiment?</p> <p>9 A. No.</p> <p>10 Q. I'm going to try to take you further in time</p> <p>11 and say did anybody ever express to you, looking</p> <p>12 back, to say, "Hey, we weren't very fair to</p> <p>13 McPherson. We should have given him a shot and not</p> <p>14 reacted to the negative information we were receiving</p> <p>15 from Temple when he got here"?</p> <p>16 A. In that specific dialogue, no.</p> <p>17 Q. Well, no. I -- words to that effect. I'm</p> <p>18 not trying to quote anybody.</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Okay. No one expressed regret of how</p> <p>21 McPherson was viewed in a negative light based upon</p> <p>22 all of the gossip about Temple that was -- he was</p> <p>23 arriving with, nobody expressed regret to you?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. Okay. Would it be true that McPherson did</p>	<p>93</p> <p>1 Q. Did anybody under you get a Director Award?</p> <p>2 A. The squad during our riot investigations,</p> <p>3 yeah, we got a Regional Director's Award if I'm --</p> <p>4 yeah.</p> <p>5 Q. Okay. That's regional. But you just said</p> <p>6 the director. So I -- my question is did anybody get</p> <p>7 a Director's Award --</p> <p>8 A. Not that I --</p> <p>9 Q. -- under you?</p> <p>10 A. -- recall, no.</p> <p>11 Q. Okay. So the big one under you was the</p> <p>12 Regional Director award, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So did anyone get a Regional Director</p> <p>15 award under you?</p> <p>16 A. No.</p> <p>17 Q. That would have been Lieutenant Hanson. He</p> <p>18 got it for the George Floyd protest work that 7C2 had</p> <p>19 done. Is that right?</p> <p>20 A. The -- I don't recall if he got a Regional</p> <p>21 Director's award or not for his squad.</p> <p>22 Q. Okay. You don't recall anybody getting a</p> <p>23 Regional Director award under you while you were</p> <p>24 there as a captain?</p> <p>25 A. So --</p>

<p style="text-align: right;">94</p> <p>1 Q. Yes or no?</p> <p>2 A. No.</p> <p>3 Q. Okay. Are you aware that McPherson got a</p> <p>4 Regional Director award for his work after you left?</p> <p>5 A. No.</p> <p>6 Q. Okay. Are you aware that McPherson had --</p> <p>7 was more productive during the George Floyd protest</p> <p>8 work than any other special agent in your three</p> <p>9 squads?</p> <p>10 A. No.</p> <p>11 Q. He had more contacts. He had more contacts</p> <p>12 that led to arrests. He had more identifications.</p> <p>13 All of those objective measures?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Okay. Who had more?</p> <p>16 A. I don't recall who had the most contacts for</p> <p>17 the situation that you described, the contacts, the</p> <p>18 arrests, the -- I don't remember who had more.</p> <p>19 Q. Okay. Would you have given that person an</p> <p>20 award if they had had the most?</p> <p>21 A. During the George Floyd riot we were -- we</p> <p>22 were very well pleased with everyone as a whole on</p> <p>23 their performance during that time.</p> <p>24 MR. NOTZON: Object as nonresponsive.</p> <p>25 Q. (BY MR. NOTZON) Would you have given that</p>	<p style="text-align: right;">96</p> <p>1 were doing more work than any of the other two</p> <p>2 squads?</p> <p>3 A. No, they weren't.</p> <p>4 Q. Okay.</p> <p>5 A. All the squads --</p> <p>6 Q. And what objective measures do you have to</p> <p>7 verify that they weren't doing more objective work</p> <p>8 than the other two squads?</p> <p>9 A. Purely the stats. If you are able to pull</p> <p>10 up the stats for -- during that time frame. I don't</p> <p>11 have access to them. However --</p> <p>12 Q. What stats?</p> <p>13 A. The stats inside our reporting system.</p> <p>14 Q. Yeah, what stats?</p> <p>15 A. Well, for everything that you just</p> <p>16 described, you can pull up stats for that.</p> <p>17 Q. Can you identify the stats that you would go</p> <p>18 look at to see which squad was doing more work?</p> <p>19 A. It's auditable. Our reporting system is</p> <p>20 auditable.</p> <p>21 THE REPORTER: I'm sorry. It's what?</p> <p>22 THE WITNESS: Auditable.</p> <p>23 THE REPORTER: Thank you.</p> <p>24 Q. (BY MR. NOTZON) Could you name the stats</p> <p>25 that you would look at that would be important to you</p>
<p style="text-align: right;">95</p> <p>1 person an award, whoever had the most, the most</p> <p>2 objective criteria compared to the other special</p> <p>3 agents during that work?</p> <p>4 A. Would we have or did we is the question?</p> <p>5 Q. I'll take both answers.</p> <p>6 A. Not that I recall.</p> <p>7 Q. Is that an answer to both questions?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And while that was going on, the</p> <p>10 George Floyd protest work, McPherson was on 7C1,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Working counter-surveillance?</p> <p>14 A. Yes.</p> <p>15 Q. And a lot of 7C1 was working</p> <p>16 counter-surveillance during that work, correct?</p> <p>17 A. All of 7C1.</p> <p>18 Q. While they were still doing their</p> <p>19 investigative work, which was more than any other</p> <p>20 squad, correct?</p> <p>21 A. No.</p> <p>22 Q. They weren't doing their -- continuing to do</p> <p>23 their investigative work?</p> <p>24 A. Yes, they were.</p> <p>25 Q. But you're not willing to admit that they</p>	<p style="text-align: right;">97</p> <p>1 as signifying substantial work done by the squads?</p> <p>2 A. So one would be investigations opened and</p> <p>3 charges filed and disposition of charges.</p> <p>4 Q. Okay. Anything else?</p> <p>5 A. I mean, you can look at surveillance hours</p> <p>6 on there also.</p> <p>7 Q. Okay. Anything else?</p> <p>8 A. I mean, everyone as a whole at the district</p> <p>9 were conducting the same work. So --</p> <p>10 Q. I'm -- that's not answering my question.</p> <p>11 I'm just asking about the criteria, the data that you</p> <p>12 would look at.</p> <p>13 A. Our -- the reporting system is pretty</p> <p>14 robust. So whatever you want to look at, you can</p> <p>15 probably audit it and get that -- get the stats that</p> <p>16 you're looking for.</p> <p>17 Q. I'm asking you to please identify for us,</p> <p>18 from your role as captain of the unit, what you</p> <p>19 viewed as important criteria that you would look at</p> <p>20 and it would be important to you to show that the</p> <p>21 squad was doing substantial work in that area.</p> <p>22 And if a squad was doing substantial</p> <p>23 work in the raft of the data that you're identifying</p> <p>24 as important to you in your assessment of the work,</p> <p>25 that that would be info -- it would be substantial</p>

<p style="text-align: right;">106</p> <p>1 A. Uh-huh, yeah.</p> <p>2 Q. Were -- those employees that I just named,</p> <p>3 were they already working under you prior to October</p> <p>4 of 2019?</p> <p>5 A. Amongst others, yes.</p> <p>6 Q. Okay. What others were working under you</p> <p>7 prior to October of 2019, that are here on this list?</p> <p>8 A. Well, Carlton Scott, Mario Reyes, Rudy</p> <p>9 Torrez, Travis Stenberg, Chris Barclay, Randall</p> <p>10 Davis, Robert Cameron, Sandra Barrette, and David</p> <p>11 Seard.</p> <p>12 Q. Okay. So 7C3 was already populated with</p> <p>13 Saldivar and the five people under him prior to</p> <p>14 October of 2019?</p> <p>15 A. I don't recall.</p> <p>16 Q. Okay. But as of October 15th of 2019, there</p> <p>17 are two vacancies, one in 7C1 and one in 7C2, right?</p> <p>18 A. That's what it appears, yes.</p> <p>19 Q. Okay. So what you said earlier about 7C2</p> <p>20 having no vacancies when McPherson came in, that was</p> <p>21 not true, correct?</p> <p>22 A. I don't recall.</p> <p>23 Q. Well, this is your document, Exhibit 1. It</p> <p>24 shows that there was a vacancy when McPherson arrives</p> <p>25 in October. So that would show that what you said</p>	<p style="text-align: right;">108</p> <p>1 Q. Right? He -- you could tell English was not</p> <p>2 his first language?</p> <p>3 A. He has an Italian accent.</p> <p>4 Q. So much so that you could tell that was not</p> <p>5 his first -- that English is not his first language,</p> <p>6 correct?</p> <p>7 A. Sir, my wife is a Mexican national. English</p> <p>8 is a second language, and you couldn't tell. So I --</p> <p>9 that -- no, I'm just telling you he had an Italian</p> <p>10 accent. I don't know.</p> <p>11 Q. You just stated the inverse of what I was</p> <p>12 trying to say about him using your wife as an</p> <p>13 example. If she doesn't sound like she's an English</p> <p>14 as a second language speaker, that's great for her,</p> <p>15 but that's not the question I'm asking.</p> <p>16 I'm asking if Bibilonisambolin, with his</p> <p>17 heavy accent, shows you that he was not English,</p> <p>18 English was not his first language because he hadn't</p> <p>19 been able to master it like your wife?</p> <p>20 A. No, I'm not going to agree to that.</p> <p>21 Q. Okay. But regardless, you knew him to be a</p> <p>22 native Italian that came to the United States?</p> <p>23 A. I learned that, yes.</p> <p>24 Q. Okay. And you look at the other nine names</p> <p>25 in 7C2 and 7C3 and there are no blacks there,</p>
<p style="text-align: right;">107</p> <p>1 earlier wasn't true, correct, that there was a</p> <p>2 vacancy in 7C2 when McPherson came in?</p> <p>3 A. I don't specifically know when this chart</p> <p>4 was made. I see the effective date on it, but I</p> <p>5 don't know specifically when the chart was made.</p> <p>6 Q. Regardless, there's a vacancy --</p> <p>7 A. It could have been --</p> <p>8 Q. -- on 7C2, right?</p> <p>9 A. It could have been after he got there.</p> <p>10 Q. Okay. Sitting here today, you can't say</p> <p>11 that, right?</p> <p>12 A. Correct.</p> <p>13 Q. What you can say today is looking at this</p> <p>14 organizational chart that was produced by DPS and</p> <p>15 your particular unit shows a vacancy during the month</p> <p>16 that McPherson arrived, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And looking at that list, McPherson,</p> <p>19 Livingston, and Oduwole are all black, right?</p> <p>20 A. Yes.</p> <p>21 Q. And Bibilonisambolin is an Italian native,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. With a very heavy accent?</p> <p>25 A. Okay.</p>	<p style="text-align: right;">109</p> <p>1 correct?</p> <p>2 A. No, sir.</p> <p>3 Q. That's correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. Earlier you said you didn't remember</p> <p>6 who was in the other units, so I was just trying to</p> <p>7 help you.</p> <p>8 Now you can see that the blacks were</p> <p>9 only in 7C1, correct?</p> <p>10 A. The elite squad, yes. I see what you're</p> <p>11 saying now.</p> <p>12 Q. The elite squad?</p> <p>13 A. Oh, yeah.</p> <p>14 Q. The investigation unit you're referring to</p> <p>15 as the elite squad?</p> <p>16 A. Yes.</p> <p>17 Q. When did you first refer to it as the elite</p> <p>18 squad?</p> <p>19 A. I'm just telling you it was.</p> <p>20 Q. Without in jest -- without being in jest?</p> <p>21 A. No, the investigators on 7C1 were top notch</p> <p>22 investigators.</p> <p>23 Q. Okay. That didn't answer my question. When</p> <p>24 did you first refer to 7C1 as the elite unit? Was it</p> <p>25 today, just now?</p>

<p>110</p> <p>1 A. No. Oh, no. No, no, no.</p> <p>2 Q. Okay.</p> <p>3 A. That's been the sentiment all along.</p> <p>4 Q. Whose sentiment?</p> <p>5 A. Myself, Major Ortiz, how we explained it to</p> <p>6 the lieutenants. We hopefully shared with them that</p> <p>7 they were the cream of the crop.</p> <p>8 Q. They're not the troublemakers?</p> <p>9 A. Oh, no.</p> <p>10 Q. They're not the trouble squad?</p> <p>11 A. No.</p> <p>12 Q. They're not the C-1 squad?</p> <p>13 A. I didn't give them that designation.</p> <p>14 Q. You knew that they were referred to it that</p> <p>15 way, though?</p> <p>16 A. At one point, yes, it became apparent or</p> <p>17 brought to my attention.</p> <p>18 Q. And you never took any action to stop that,</p> <p>19 correct?</p> <p>20 A. What do you mean by "action to stop" what?</p> <p>21 Q. Did you ever issue a directive to stop</p> <p>22 referring to 7C1 as the C-1 squad?</p> <p>23 A. No.</p> <p>24 Q. Did you ever tell the special agents that</p> <p>25 C-1 was the elite squad? And when I say "special</p>	<p>112</p> <p>1 Q. Did Alonzo have a C-1?</p> <p>2 A. No, not -- no, not when he was put on that</p> <p>3 squad.</p> <p>4 Q. Did Livingston have a C-1?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. Did Oduwole have a C-1?</p> <p>7 A. Yes.</p> <p>8 Q. Did any of the special agents in 7C2 and 7C3</p> <p>9 have C1s?</p> <p>10 A. I don't think so.</p> <p>11 MR. HARRIS: Object to the form of the</p> <p>12 question. What time period are you referring to?</p> <p>13 MR. NOTZON: I'm referring to as their</p> <p>14 names are on this sheet and at any time after that,</p> <p>15 if the captain wants to testify to that.</p> <p>16 A. So, I mean, McPherson was transferred to --</p> <p>17 Q. (BY MR. NOTZON) No, I'm talking about 7C2</p> <p>18 and 7C3. That's the question he's asking about.</p> <p>19 A. Okay. You just said at any given time.</p> <p>20 So --</p> <p>21 Q. From 7C2 or 7C3 was the objection, about</p> <p>22 those nine names?</p> <p>23 A. All right. Would you please specify your</p> <p>24 question again, please?</p> <p>25 Q. Of those nine, did any of them have a C-1?</p>
<p>111</p> <p>1 agents," I'm referring to all special agents in your</p> <p>2 three squads.</p> <p>3 A. No. I wouldn't say -- I would say no.</p> <p>4 Q. And two more special agents were added to</p> <p>5 7C1 after those four, correct, in the next six months</p> <p>6 or -- to a year, correct?</p> <p>7 A. We had 18 then so -- yes.</p> <p>8 Q. And they were both black, correct?</p> <p>9 A. So I know Alonzo and Patrick was, and then</p> <p>10 if you're saying a second one is added to it.</p> <p>11 Q. You don't remember the other black employee</p> <p>12 you had under you that you added to 7C1?</p> <p>13 A. Remind me and maybe I will.</p> <p>14 Q. Sure. I just was seeing if you could</p> <p>15 remember on your own since he was the last black</p> <p>16 employee that was added and yet you added him to 7C1</p> <p>17 and not the other units.</p> <p>18 A. Okay. Who was it?</p> <p>19 Q. You still don't remember?</p> <p>20 A. I'm asking you.</p> <p>21 Q. Justin Murphy?</p> <p>22 A. Oh, Justin. Yeah. Yeah. Justin, yeah,</p> <p>23 he's a good guy. Very, very, very good investigator.</p> <p>24 Q. Did he have a C-1?</p> <p>25 A. No, not that I remember.</p>	<p>113</p> <p>1 A. In 7C2 and 7C3 right now, not that I recall.</p> <p>2 Q. That's the same answer you gave before.</p> <p>3 A. Okay.</p> <p>4 Q. Okay. Did anybody else try to get on 7C2</p> <p>5 besides McPherson that you denied?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Okay. And just to clarify, you are aware</p> <p>8 that McPherson wanted to be on 7C2 when he arrived to</p> <p>9 Austin?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And he continued to express interest</p> <p>12 in getting on 7C2 even afterwards?</p> <p>13 A. And he was ultimately placed on 7C2.</p> <p>14 Q. So the answer to my question is yes?</p> <p>15 A. Yes, he did express he wanted to be on 7C2.</p> <p>16 Q. All right. And continued to express that?</p> <p>17 A. Yes.</p> <p>18 Q. And you didn't allow it until mid 2020,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Do you remember when exactly you put him on</p> <p>22 7C2?</p> <p>23 A. No.</p> <p>24 Q. Wouldn't it be accurate that it was shortly</p> <p>25 after Lieutenant Martinez filed his EEO complaint of</p>

<p style="text-align: right;">178</p> <p>1 A. It's a summation of what she told me, yes.</p> <p>2 Q. Okay. And you never had a conversation with</p> <p>3 him about that?</p> <p>4 A. I don't recall if I told him specifically</p> <p>5 what she said or not.</p> <p>6 Q. Okay. And did you -- did you tell her "Be</p> <p>7 that as it may, he's still got a great reason to go</p> <p>8 back and he's got some serious family needs"? Did</p> <p>9 you try to convince her?</p> <p>10 A. Yes.</p> <p>11 Q. And she wasn't being convinced?</p> <p>12 A. I didn't -- I didn't get that from her, no.</p> <p>13 Q. Okay.</p> <p>14 MR. NOTZON: All right. Stay close.</p> <p>15 When I pop back up, we'll get going again, okay?</p> <p>16 THE WITNESS: What does that mean?</p> <p>17 MR. NOTZON: In other words, we're</p> <p>18 taking a short break and you're watching your screen</p> <p>19 in case I pop up to ask you a few more questions.</p> <p>20 THE WITNESS: Okay.</p> <p>21 THE REPORTER: Off the record at 3:07.</p> <p>22 (Brief recess.)</p> <p>23 THE REPORTER: Back on the record at</p> <p>24 3:11.</p> <p>25 Q. (BY MR. NOTZON) Okay. Mr. Koenig, I wanted</p>	<p style="text-align: right;">180</p> <p>1 write-up that's submitted to support the actions.</p> <p>2 Q. Okay. The nomination?</p> <p>3 A. Yes.</p> <p>4 Q. And a -- the nomination apparently complies</p> <p>5 with the purpose of the award. And then is it an</p> <p>6 annual award, or is it only when it occurs?</p> <p>7 A. I'm not sure. No, I mean only it -- I mean,</p> <p>8 life saving award is when it occurs.</p> <p>9 Q. Okay. So anytime somebody saves a life,</p> <p>10 they get an award?</p> <p>11 A. I mean, if the potential is there.</p> <p>12 Q. Okay. And that could happen, there could be</p> <p>13 a weekly award if it qualifies and it gets -- it's</p> <p>14 not an annual thing?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So there's no competition between</p> <p>17 individuals saving lives to who had the better save</p> <p>18 that year?</p> <p>19 A. No, no.</p> <p>20 Q. It's just if you do a good job and the</p> <p>21 powers that be say that this qualifies for an award,</p> <p>22 it gets an award?</p> <p>23 A. Correct.</p> <p>24 Q. And that's presumably through the chain of</p> <p>25 command?</p>
<p style="text-align: right;">179</p> <p>1 to ask you about one particular incident with</p> <p>2 Lieutenant Martinez and Special Agent Murphy.</p> <p>3 Do you recall that they saved that</p> <p>4 person's life that was wanting to jump and they</p> <p>5 talked him out or talked him down or away or</p> <p>6 whatever, however you want to put it?</p> <p>7 A. Was it Murphy or Agent Head?</p> <p>8 Q. I believe Head observed and then nominated</p> <p>9 them for an award because he observed Murphy and</p> <p>10 Martinez talking him down, but Head didn't actually</p> <p>11 -- wasn't actually engaged.</p> <p>12 A. Okay. I remember the situation.</p> <p>13 Q. Okay. Does that sound familiar?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you're aware that they were</p> <p>16 nominated for an award, correct?</p> <p>17 A. No.</p> <p>18 Q. All right. How does a nominate -- well, I</p> <p>19 think it's a life saving award. Is there such a</p> <p>20 thing?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Is that the name of it?</p> <p>23 A. I believe it is, correct.</p> <p>24 Q. Okay. And how does that work?</p> <p>25 A. Much with any other award, there is a</p>	<p style="text-align: right;">181</p> <p>1 A. Correct.</p> <p>2 Q. And so somebody who nominates could be</p> <p>3 anyone from, I guess, even a citizen --</p> <p>4 A. Yes.</p> <p>5 Q. -- all the way through to the director could</p> <p>6 nominate somebody?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And in this case, we understand that</p> <p>9 Special Agent Head had nominated Martinez and Murphy?</p> <p>10 A. It was discussed.</p> <p>11 Q. Between who?</p> <p>12 A. But I don't recall if -- the nomination ever</p> <p>13 actually coming through my desk.</p> <p>14 Q. Okay. Who discussed it?</p> <p>15 A. During the lieutenants meeting, the activity</p> <p>16 was discussed of what took place.</p> <p>17 Q. Okay. And so the lieutenants meeting would</p> <p>18 have been four people?</p> <p>19 A. Three lieutenants and myself, yes.</p> <p>20 Q. Okay. And who --</p> <p>21 THE REPORTER: I'm sorry. Did you say</p> <p>22 -- did you say, "three lieutenants and myself"?</p> <p>23 THE WITNESS: Yes, ma'am.</p> <p>24 THE REPORTER: Okay. Thank you.</p> <p>25 Q. (BY MR. NOTZON) And who brought it up?</p>

<p>182</p> <p>1 A. I don't recall.</p> <p>2 Q. Okay. Head would have been under Hanson at</p> <p>3 that time, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And Murphy was under Martinez?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And what was the discussion?</p> <p>8 A. The discussion was the description of the</p> <p>9 events that took place.</p> <p>10 Q. Okay. And then what?</p> <p>11 A. And then it's, "Hey, well, write that up and</p> <p>12 we'll send it up and see if it qualifies for the</p> <p>13 award."</p> <p>14 Q. Okay. So all four of you agreed that it</p> <p>15 should be written up and submitted?</p> <p>16 A. We thought so, yes.</p> <p>17 Q. And that direction was made to who to get it</p> <p>18 written up?</p> <p>19 A. I want to say it was to Lieutenant Hanson to</p> <p>20 direct or to tell Agent Head to write that -- to</p> <p>21 write the events up.</p> <p>22 Q. To invite him to do so if he felt like it</p> <p>23 warranted it?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And what's the next thing you heard</p>	<p>184</p> <p>1 asked anything again?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Is there a limit on time for when the</p> <p>4 life saving event must be written up and submitted</p> <p>5 for award?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. Okay. Is there a reason why you didn't</p> <p>8 follow up again?</p> <p>9 A. Just -- no, no reason.</p> <p>10 Q. Okay. Do you remember when that was that</p> <p>11 the event happened, the life saving event happened?</p> <p>12 A. No.</p> <p>13 Q. Do you remember if it was just before you</p> <p>14 retired or a substantial period of time before you</p> <p>15 retired?</p> <p>16 A. No. I don't know the specific time frame.</p> <p>17 Q. Before you retired, did you ask for your</p> <p>18 chain of command to write assessments of you?</p> <p>19 A. Before I retired did I ask them? No.</p> <p>20 Q. Yeah. At any time before you retired, did</p> <p>21 your chain of command under you write assessments of</p> <p>22 you and your performance as a supervisor?</p> <p>23 A. No.</p> <p>24 Q. This doesn't ring a bell to you, that people</p> <p>25 had written assessments about you separate from your</p>
<p>183</p> <p>1 about the nomination for that award for Martinez and</p> <p>2 Murphy?</p> <p>3 A. Nothing.</p> <p>4 Q. You never heard it again?</p> <p>5 A. I don't believe -- I don't believe so.</p> <p>6 Q. And did you ask any questions to follow up?</p> <p>7 A. No.</p> <p>8 Q. So you had an agreement with the four of you</p> <p>9 to proceed with the nomination, but you never heard</p> <p>10 anything about it and you never followed it up to</p> <p>11 find out what happened with that agreement and an</p> <p>12 instruction for Hanson to get Head to write it up?</p> <p>13 A. So what happened was --</p> <p>14 Q. Yes or no.</p> <p>15 A. Yes, I did.</p> <p>16 Q. You did do something?</p> <p>17 A. I did question about it.</p> <p>18 Q. Okay. Tell me what you did.</p> <p>19 A. I questioned Lieutenant Hanson about it, and</p> <p>20 he said that they're going to get to it. And I guess</p> <p>21 it never -- they never got to it and time had passed</p> <p>22 and nothing happened.</p> <p>23 Q. Okay. So you asked one time Hanson to find</p> <p>24 out what happened, and he said they're working on it.</p> <p>25 And you never found out anything again, and you never</p>	<p>185</p> <p>1 supervisor doing your annual evaluation?</p> <p>2 A. No.</p> <p>3 Q. Did you -- you did get an annual evaluation?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. But other than that annual</p> <p>6 evaluation, you don't -- you're not aware of anybody</p> <p>7 writing an evaluation or assessment or, you know,</p> <p>8 critique of you as a captain?</p> <p>9 A. My supervisor did.</p> <p>10 Q. Yeah, as part of your evaluation?</p> <p>11 A. Right.</p> <p>12 Q. Yeah. Other than that, any other</p> <p>13 assessments that you're aware of that people wrote or</p> <p>14 were asked to write about you?</p> <p>15 A. No, not aware.</p> <p>16 Q. Are you aware of any investigation being</p> <p>17 conducted of the complaints that were made by</p> <p>18 Martinez, McPherson, Alonzo, or Livingston?</p> <p>19 A. That took place or that are current? What</p> <p>20 do you mean?</p> <p>21 Q. Yeah, that took place following their</p> <p>22 complaints of discrimination.</p> <p>23 A. I mean, actual investigations by OIG --</p> <p>24 Q. Or EEO.</p> <p>25 A. I do know that EEO was looking into it. I</p>

<p>186</p> <p>1 don't know -- I mean, that was an investigation. 2 They looked into it. 3 Q. But you're not aware of any interviews that 4 were conducted either of you or any of your 5 subordinates? 6 A. With Brenda Helton there was several 7 interviews that took place with that one. 8 Q. Okay. By who? 9 A. I think it was Mike -- I've gone blank for 10 his name. Mike, Michael. I can't remember his last 11 name. 12 Q. Okay. Any others? 13 A. I mean, other investigations being 14 conducted? 15 Q. Yeah. 16 A. Dealing with -- 17 Q. Complaints of discrimination from people 18 that are under your supervision. 19 A. Complaints of discrimination, no. 20 Q. All right. 21 MR. NOTZON: I'll pass the witness. 22 MR. HARRIS: All right. We'll reserve 23 our questions for trial and request that the witness 24 be given an opportunity to review and sign the 25 transcript.</p>	<p>188</p> <p>1 CHANGES AND SIGNATURE 2 WITNESS NAME: MARK KOENIG 3 DATE OF DEPOSITION: NOVEMBER 17, 2022 4 PAGE LINE CHANGE REASON 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>
<p>187</p> <p>1 MR. NOTZON: Thank you. Good luck. Off 2 the record? 3 THE REPORTER: Yes. Off the record -- 4 oh, hang on a second. Mr. Harris, did you also want 5 to buy a copy of the transcript? 6 MR. HARRIS: Yes. 7 THE REPORTER: Okay. 8 MR. HARRIS: Let's get a digital, like a 9 miniscript pdf. 10 (Deposition concluded at 3:22 p.m.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>189</p> <p>1 I, MARK KOENIG, have read the foregoing 2 deposition and hereby affix my signature that same is 3 true and correct, except as noted above. 4 5 _____ 6 MARK KOENIG 7 THE STATE OF _____) 8 COUNTY OF _____) 9 Before me, _____, on this day 10 personally appeared MARK KOENIG, known to me (or 11 proved to me under oath or through _____) 12 (description of identity card or other document) to 13 be the person whose name is subscribed to the 14 foregoing instrument and acknowledged to me that he 15 executed the same for the purposes and consideration 16 therein expressed. 17 18 Given under my hand and seal of office, this 19 _____ day of _____, _____. 20 21 _____ 22 NOTARY PUBLIC IN AND FOR 23 THE STATE OF _____ 24 My commission expires: _____ 25 ____ No Changes Made ____ Amendment Sheet(s) Attached</p>

<p>190</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS</p> <p>2 AUSTIN DIVISION</p> <p>3 JARI MCPHERSON, JERALD) SAMS, AND DANIEL MARTINEZ,)</p> <p>4)</p> <p>Plaintiffs,)</p> <p>5) CIVIL ACTION</p> <p>VS.)</p> <p>6) NO.: 1:20-cv-01223-DAE</p> <p>TEXAS DEPARTMENT OF PUBLIC)</p> <p>7 SAFETY,)</p> <p>8)</p> <p>Defendant.)</p> <p>9 REPORTER'S CERTIFICATION OF THE REMOTE ORAL DEPOSITION OF MARK KOENIG</p> <p>10 NOVEMBER 17, 2022</p> <p>11 I, Vanessa J. Theisen, a Certified</p> <p>12 Shorthand Reporter in and for the State of Texas,</p> <p>13 hereby certify to the following:</p> <p>14 That the witness, MARK KOENIG, was duly</p> <p>15 sworn by the officer and that the transcript of the</p> <p>16 oral deposition is a true record of the testimony</p> <p>17 given by the witness;</p> <p>18 That the original deposition was delivered</p> <p>19 to Mr. Drew Harris to obtain witness's signature.</p> <p>20 That a copy of this certificate was served</p> <p>21 on all parties and/or the witness shown herein on</p> <p>22 December 8th, 2022.</p> <p>23</p> <p>24 I further certify that pursuant to FRCP</p> <p>25 Rule 30(3) that the signature of the deponent:</p>	
<p>191</p> <p>1 __XX_ was requested by the deponent or a</p> <p>2 party before the completion of the deposition and</p> <p>3 that the signature is to be before any notary public</p> <p>4 and returned within 30 days from date of receipt of</p> <p>5 the transcript.</p> <p>6 If returned, the attached Changes and</p> <p>7 Signature Page contains any changes and the reasons</p> <p>8 therefore:</p> <p>9 ____ was not requested by the deponent or</p> <p>10 a party before the completion of the deposition.</p> <p>11 I further certify that I am neither</p> <p>12 counsel for, related to, nor employed by any of the</p> <p>13 parties or attorneys in the action in which this</p> <p>14 proceeding was taken, and further that I am not</p> <p>15 financially or otherwise interested in the outcome of</p> <p>16 the action.</p> <p>17 Certified to by me on this, the 8th day</p> <p>18 of December, 2022.</p> <p>19</p> <p>20</p> <p>21 VANESSA J. THEISEN, Texas CSR, RPR</p> <p>22 Texas Cert No. 3238</p> <p>23 Expiration Date: 10/31/23</p> <p>24 Integrity Legal Support Solutions</p> <p>25 Firm Registration No. 528</p> <p>9901 Brodie Ln., Ste. 160-400</p> <p>Austin, Texas 78748</p> <p>(512) 320-8690</p> <p>www.integritylegal.support</p>	